

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

JAMES A. KAY, JR.

Licensee of one hundred sixty
four Part 90 licenses in the
Los Angeles, California area

**CORRESPONDENCE
FILE**
DOCKET FILE

WT DOCKET NO. 94-147

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

To: Hon. Richard L. Sippel, Administrative Law Judge

MOTION TO COMPEL DISCOVERY

**CORRESPONDENCE
FILE**

JAMES A. KAY, JR.

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Dated: March 17, 1995

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SUMMARY OF THE FILING

James A. Kay, Jr. (Kay), by his attorneys, respectfully requests that the Presiding Judge order the Chief, Wireless Telecommunications Bureau (Bureau), to respond fully and completely to Kay's First Set of Interrogatories.

The Bureau refused to respond completely to most of the questions posed by Kay's First Set of Interrogatories. Many of its responses were incomplete and unresponsive. The bases for objection set forth by the Bureau were without merit.

In the filing, Kay explains his reasons for requesting that the Presiding Judge order the Bureau to respond completely. Kay also suggests the procedural consequences which should follow from continued refusal of the Bureau to respond completely.

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To: Hon. Richard L. Sippel, Administrative Law Judge

MOTION TO COMPEL DISCOVERY

James A. Kay, Jr. (Kay), by his attorneys, pursuant to Section 1.323(c) of the Commission's Rules, respectfully requests that the Presiding Judge order the Chief, Wireless Telecommunications Bureau, to respond fully to Kay's First Set of Interrogatories in the above-captioned matter. In support of his position, Kay shows the following.

For the convenience of the Bureau and the Presiding Judge, Kay will request that the Presiding Judge order the Bureau to respond fully and completely with respect to specifically numbered interrogatories. Kay will explain his reasons for requesting an order compelling discovery with respect to each specifically numbered interrogatory.

Interrogatory 1-4: The Bureau's answer was incomplete and not responsive to the interrogatory. The Bureau's answer referenced its answer to Interrogatory 1-2, which had requested "each fact on which the Commission relies for its position that Kay failed to respond

to Commission requests for written statements." However, Interrogatory 1-4 requests "each fact which Kay failed to supply in response to a Commission request." The Bureau's answer to Interrogatory 1-4 supplied no fact known to the Bureau which it believes Kay did not supply in response to a request from the Commission. An example of the scope and detail of an answer which would be considered responsive and complete would be:

1. Kay failed to state that he or companies under which he does business holds licenses for the following licenses (facilities which are located on U.S. Forest Service land are annotated by asterisks): [followed by a list of call signs, organized by licensee name and annotated by asterisks to the extent that the information is known to the Commission];
2. For each of the call signs listed in 1., above, the original date of grant of the call sign, the date that the licensed station was constructed and placed in operation, and the type of facility are shown in the following table: [followed by a table of call signs, original grant dates, dates of construction and placing in operation, and type of facility to the extent that the information is known to the Commission];
3. The following persons are users on the stations identified by call sign at 1., above: [followed by a list of users known to the Commission, organized by call sign of the associated Kay station and cross indexed to multiple systems to the extent that the information is known to the Commission];
4. The total number of units operated on each station is shown in the following table: [followed by a list of totals known to the Commission, organized by call sign].

So that Kay can be informed of each relevant fact which the Commission knows, which Kay did not supply in response to a written Commission request, Kay respectfully requests that the Presiding Judge order the Bureau to provide a full and complete response to the interrogatory.

Interrogatory 1-5: The Bureau's answer was incomplete and not responsive to the interrogatory. As the Bureau recognized in the introduction to its Response, "Commission personnel may be questioned generally . . . regarding facts as to which they have direct personal

knowledge," 47 C.F.R. §1.311(b)(4). At Interrogatories 2-7 and 2-8, the Bureau provided elaborate statements of facts which it alleges are known to a Commission employee, yet no reference to those facts was included in the Bureau's answer to Interrogatory 1-5. In its answer to Interrogatory 3-1, the Bureau stated that it had conducted "interviews with Los Angeles communications providers," and named three such interviewees. Commission personnel obviously know of their own personal knowledge from those interviews the fact that a certain person (whose identity it might be entitled not to disclose) made a certain statement and that statement forms a part of the basis of the Commission's belief that Kay has failed to comply with the Act and the Commission's Rules. Yet, the Bureau's answer to Interrogatory 1-5 contained no information concerning the fact that any statement, whatsoever, had ever been made by any person which formed the basis for the Commission's belief.

Kay's Interrogatory 1-5 was no broader in scope than the issues designated by the Hearing Designation Order, or if it were, the Bureau was surely entitled to construe the Interrogatory as requesting only relevant information. Kay is entitled to discovery of any information which may lead to admissible evidence, *see*, Fed. R. Civ. P. 26(b)(1). Therefore, overbreadth was not a valid basis for the Bureau's objection.

Kay's Interrogatory 1-5 did not request that the Bureau identify which of the requested information it regards as admissible evidence. Accordingly, the Bureau's objection that Kay prematurely sought the Bureau's case is unavailing. Since the interrogatory did not request the

disclosure of any exhibit, as such, the Bureau's objection that the interrogatory ignored the Bureau's exhibit exchange date is without merit.

An example of the type of answer concerning particular facts, the scope and detail of which Kay would find to be responsive and complete was provided by the Bureau's answer to Kay's Interrogatory 2-7. With respect to each fact ascertained by investigation or contained in any complaint which forms the basis for the Commission's belief that Kay has failed to comply with the Act or the Commission's Rules, Kay requests that the Bureau be ordered to provide an answer similar in scope and detail to that which it provided to Kay's Interrogatory 2-7.

Interrogatory 1-6: The Bureau's answer was incomplete and not responsive to the interrogatory. The basis asserted for the Bureau's objection was invalid. The Bureau is correct that the interrogatory "goes beyond the scope of substantive violations by Kay identified in paragraph 1 of the HDO". There have been raised substantial and material questions of fact as to whether Kay has violated the Act and/or the Commission's rules." However, an issue of whether a person possesses the character qualifications necessary to be a Commission licensee is not necessarily limited to whether the person has violated the Act and/or the Commission's rules, *see*, Policy Regarding Character Qualifications, 6 FCC Rcd. 3448 (1991). Accordingly, Kay's Interrogatory 1-6 was not overbroad and the Presiding Judge should order the Bureau to respond completely.

The Bureau offered in answer to Kay's Interrogatory 1-6 reference to its answers to others of Kay's interrogatories. To the extent that Kay otherwise requests that the Presiding Judge order the Bureau to respond fully to those interrogatories, Kay incorporates herein his justification for a complete answer to Interrogatory 1-6.

An example of the type of answer concerning particular facts, the scope and detail of which Kay would find to be responsive and complete was provided by the Bureau's answer to Kay's Interrogatory 2-7. With respect to each fact ascertained by investigation or contained in any complaint which forms the basis for the Commission's belief that Kay may not possess the character qualifications necessary to be a Commission licensee, Kay requests that the Bureau be ordered to provide an answer similar in scope and detail to that which it provided to Kay's Interrogatory 2-7.

Interrogatories 1-7, 2-9, 3-7, 4-8, 5-9, 6-8, 7-5, 10g-2, and 10h-2: The Bureau's answers were incomplete and not responsive to the interrogatories. The basis for the Bureau's objection was not valid.

The interrogatories were not overbroad. By the Presiding Judge's Order, FCC 95M-28 (released on February 1, 1995), Kay was limited to ten interrogatories concerning each paragraph of the Hearing Designation Order. Such a restriction required Kay to formulate narrowly tailored interrogatories directed to certain matters, and then to ask a more general question concerning those matters concerning each paragraph of which the Bureau might have

knowledge. Each of the interrogatories covered by this discussion was directly solely to a certain paragraph of the HDO and each of these interrogatories was specific with respect to only a single paragraph of the HDO. Accordingly, in view of the limitation imposed by the Order, the interrogatory was not overbroad.

Kay is entitled to discovery of any information which may lead to admissible evidence. Accordingly, that disclosure of information on which the Bureau intends to examine Kay but which was not specifically identified elsewhere in Kay's interrogatories might result in the disclosure of "information relating to the Bureau's litigation strategy" is not a valid basis for objection.

An example of the scope and detail of an answer which Kay would find to be complete would be the following: Yes. In the alternative, an answer of "No" would be complete.

Interrogatories 1-8, 2-10, 3-8, 4-9, 5-10, 6-9, 7-6, 10g-3¹, and 10h-3: Because the Bureau's answers to Interrogatories 1-7, 2-9, 3-7, 4-8, 5-9, 6-8, 7-5, 10g-2, and 10h-2 were not complete or responsive, the Bureau's answers to these interrogatories were also not complete or responsive. Therefore, the Bureau's reference to its answer to the "preceding interrogatory" was not complete or responsive.

¹ The Bureau's answer to Kay's Interrogatory 10g-3 appears to have been inadvertently mislabelled by the Bureau as "10g-4". The Bureau answer labelled "10g-3" appears to be an inadvertent duplication of its answer to Interrogatory 10g-2.

An example of the scope and detail of an answer which Kay would find to be complete would be the following: The Commission intends to examine Kay concerning his business relationship with John Dough, 123 My Street, Anytown, California.

Interrogatories 2-1 and 2-3: The Bureau's answer was incomplete and was not responsive. The basis for the Bureau's objection was not valid.

There is no statute, rule or precedent limiting the time period which the Commission can consider in determining whether a person is qualified to be a Commission licensee. The HDO placed Kay's character qualifications in issue. Accordingly, there should be no limit on the period of time covered by Kay's discovery requests. The HDO directs the Presiding Judge to determine, in light of other designated issues, whether Kay has requisite character qualifications. Because there is no time limitation on facts which may be taken into account in determining a person's character, the Bureau's objection based on time was without merit.

Kay is entitled to discovery of any information which may lead to admissible evidence. Accordingly, there is no merit to the Bureau's objection that Kay's request may include reports or complaints which did not form the basis of the HDO.

To the extent that complying with Kay's request might result in the Bureau's disclosing the identity of an informant, the Bureau would be justified in objecting. However, to the extent that the Bureau can disclose the requested information which would not lead to the disclosure

of the identity of the informant, such information is not protected by Rule Section 1.311(b)(1), 47 C.F.R. §1.311(b)(1), and Kay is entitled to discovery of such information. Further, in its response to Kay's Interrogatory 3-1, the Bureau identified three persons with whom it had conducted interviews, thereby disclosing the identities of informants. In view of the Bureau's voluntary waiver of Rule Section 1.311(b)(1) with respect to Interrogatory 3-1, the Bureau should not be permitted to rely on Rule Section 1.311(b)(1) with respect to the instant interrogatories.

The Bureau's statement that "Attachments 1-17 and 23 are complaints in the Bureau's possession received in the last four years regarding the construction and operation of Kay's stations", when viewed in light of the Bureau's objection, does not appear to be complete and responsive to Kay's request. The Bureau's statement clearly did not state that the information which it supplied was all of the information which was in its possession which was within the terms of the interrogatory. Accordingly, to the extent that the Bureau has received any other complaint at any time which contains any information which may be discoverable or which may lead to discoverable evidence, the Bureau should be required to identify each such complaint.

Kay would find complete and responsive a statement by the Bureau that, for example:

- 1) Cornelia Dray has complained that the radio station which she operates suffered interference on a certain date and she believes that Kay was responsible for the interference; and
- 2) Copies of all complaints received by the Bureau are attached as Attachments A-Z.

Interrogatory 2-2: The Bureau's answer was incomplete and not responsive to the interrogatory. To the extent that the Bureau's answer directed Kay to refer to its answer to Interrogatory 2-1, the bases for objection set forth by the Bureau in answer to Interrogatory 2-1 were not valid. Interrogatory 2-2 asks, simply, that the Bureau "identify each of Kay's licensed radio facilities about which the Commission has received a complaint concerning its construction or operation." The Bureau could readily identify each station meeting the terms of the interrogatory without creating the risk of revealing the identity of any informant. Kay's interrogatory directly complies with the Presiding Judge's Order released on February 1, 1995, FCC 95M-28, at footnote 2, wherein the Presiding Judge urged "the Bureau to cooperate in responding to Kay's request for more specific allegations. For example, 'stations' are referred to in various places of Paragraph 2 of the Show Cause Order and Kay should be furnished the identification of each of the stations." Accordingly, the Bureau's objection was without merit and complete disclosure of the requested information should be compelled.

Kay would find to be complete and fully responsive an answer by the Bureau which stated that: The Commission has received a complaint concerning construction or operation of each of the following licensed radio facilities: [followed by a list of call signs and locations concerning which a complaint has been received].

Interrogatory 2-4: The Bureau's answer was incomplete and not responsive to the interrogatory. While the Bureau is certainly correct in stating that "the Commission has designated an issue to determine whether all of Kay's stations were constructed in a timely

fashion, or were deconstructed for a period exceeding one year," the Bureau's response merely begged the question. Accordingly, the Bureau should be directed either to state that the Commission alleges that Kay constructed none of his stations in a timely fashion, or that he deconstructed all of them for a period exceeding one year, or to identify, with specificity, each of the stations which the Commission alleges that Kay either did not construct in a timely manner or deconstructed for a period in excess of one year.

Interrogatory 2-5: The Bureau's answer was incomplete and not responsive. The basis for the Bureau's objection was not valid.

There is no statute, rule or precedent limiting the time period which the Commission can consider in determining whether a person is qualified to be a Commission licensee. The HDO placed Kay's character qualifications in issue. Accordingly, there should be no limit on the period of time covered by Kay's discovery requests. The HDO directed the Presiding Judge to determine, in light of other designated issues, whether Kay has the requisite character qualifications. Because there is no time limitation on facts which may be taken into account in determining a person's character, the Bureau's objection based on time was without merit.

Kay is entitled to discovery of any information which may lead to admissible evidence. Accordingly, there is no merit to the Bureau's objection that Kay's request may include reports or complaints which did not form the basis of the HDO.

To the extent that complying with Kay's request might result in the Bureau's disclosing the identity of an informant, the Bureau might be justified in objecting. However, to the extent that the Bureau can disclose the requested information which would not lead to the disclosure of the identity of the informant, such information is not protected by Rule Section 1.311(b)(1), 47 C.F.R. §1.311(b)(1), and Kay is entitled to discovery of such information. Further, in its response to Kay's Interrogatory 3-1, the Bureau identified three persons with whom it had conducted interviews, thereby disclosing the identities of informants. In view of the Bureau's voluntary waiver of Rule Section 1.311(b)(1) with respect to Interrogatory 3-1, the Bureau should not be permitted to rely on Rule Section 1.311(b)(1) with respect to the interrogatory 2-5.

The Bureau's statement that certain attachments "are complaints in the Bureau's possession received in the last four years regarding the mobile loading of Kay's stations", when viewed in light of the Bureau's objection, does not appear to be complete and fully responsive to Kay's request. The Bureau's statement clearly did not state that the information which it supplied was all of the information which was in its possession which was within the terms of the interrogatory. Accordingly, to the extent that the Bureau has received any other complaint at any time which contains any information which may be discoverable or which may lead to discoverable evidence, the Bureau should be required to identify each such complaint. Kay would find to be complete and responsive an answer by the Bureau that: Copies of all complaints received by the Commission that Kay is falsely reporting the number of mobile units which he serves in order to avoid the channel sharing and recovery provisions of the Commission's Rules are attached as Attachments A-Z.

Interrogatory 2-6: The Bureau's answer was incomplete and not responsive to the interrogatory. While the Bureau is certainly correct in stating that "the Commission has designated an issue as to whether Kay has violated the Commission's channel-sharing and recovery rules," the Bureau's response merely begged the question. Accordingly, the Bureau should be directed to respond completely and fully to the interrogatory. Kay would find to be a complete and responsive answer by the Bureau a statement that: The call sign, location(s) and frequencies of each station concerning which the Commission alleges that Kay has falsely reported the number of mobile units which he serves are shown in the following table: [followed by a table organized by call sign, location(s) and frequencies].

Interrogatory 3-2: The Bureau's answer was incomplete and not responsive to the interrogatory. In its answer to Interrogatory 3-1, the Bureau stated that the Commission staff had conducted "interviews with Los Angeles communications providers including Christopher Killian, Harold Pick, and James Doering." The attachments referenced by the Bureau's answer to Interrogatory 3-2 include complaints which the Commission received from Christopher Killian, from Harold Pick, and from James Doering. However, the Bureau's response was limited to supplying copies of old complaints, and did not provide any of the information which the Commission ascertained in interviews with Killian, Pick or Doering. Accordingly, the Bureau should be directed to respond completely in scope and detail by stating with particularity all relevant facts concerning each instance in which Kay is alleged to have filed applications in multiple names in order to avoid compliance with the Commission's channel sharing and recovery provisions in violation of Rule Sections 90.623 and 90.629.

Kay would find to be complete an answer by the Bureau that stated facts in the following form with respect to each allegation: Kay is alleged to have filed, on or about June 1, 1993, an application in the name of Shell Corp. in which he is the real party in interest, for an SMR-Conventional station operate on 853.XXXX MHz at Small Mountain, California, although at the time of the filing of the application, Kay held a license in the name of James A. Kay, Jr. for unloaded SMR-Trunked WABC123 at Purple Mountain, California, at a site which is less than 40 miles from the proposed Small Mountain site.

Interrogatory 3-3: The Bureau's answer was incomplete and not fully responsive to the interrogatory. Paragraph three of the HDO listed 25 names. However, the attachments referenced by the Bureau's answer made reference to, at most, 14 of those 25 names. Accordingly, Kay requests that the Bureau be directed to provide an answer the interrogatory complete in scope and detail by stating each relevant fact upon which the Commission relies for its belief that Kay may have conducted a business under a name other than James A. Kay, Jr.

Interrogatories 3-4, 3-5, and 3-6: The Bureau's answer was incomplete and not responsive to the interrogatory. While the Bureau is certainly correct in stating that "the Commission has designated an issue as to whether Kay has falsely reported his loading, in violation of the Commission's channel sharing and recovery provisions," the Bureau's response to these three interrogatories merely begged the question. Accordingly, the Bureau should be directed to identify completely, with specificity of detail,

- 1) Each station on which Kay is alleged to have inflated his loading by reporting the same mobile units on multiple licenses; and
- 2) With respect to each station on which Kay is alleged to have inflated his loading by reporting the same mobile users on multiple licenses, each mobile user which Kay is alleged to have reported on multiple licenses; and
- 3) With respect to each instance in which Kay is alleged to have inflated his loading by reporting the same mobile users on multiple licenses, the number of mobile units which Kay is alleged to have reported with respect to each of the multiple licenses.

Interrogatories 4-1, 4-2, 4-3, 4-4, 4-6, and 4-7: The Bureau's answer to Interrogatory 4-1, to which the Bureau referred for its answers to Kay's Interrogatories 4-2, 4-3, 4-4, 4-6, and 4-7, was incomplete and not fully responsive to the interrogatory. It is obvious from the Bureau's answers to various interrogatories and by facts known to Kay that the Commission is in possession of relevant facts concerning instances in which Kay is alleged to have caused interference willfully or maliciously to a radio system or radio station which it failed to disclose and which it could have disclosed without disclosing the identity of any otherwise-unidentified informant. Further, the Bureau's answer failed to disclose whether certain persons had alleged that Kay had caused interference.

In its answer to Kay's Interrogatory 3-1, the Bureau disclosed that the Commission staff had conducted interviews with Christopher Killian, Harold Pick and James Doering. At

Interrogatory 4-1, the Bureau stated that Edward Cooper and Cornelia Dray are believed to have knowledge of instances of deliberate and/or malicious interference. Both Edward Cooper and Cornelia Dray have stated under oath that they were interviewed by W. Riley Hollingsworth during late 1994. The Commission has knowledge of the facts which each of those persons, and every other person whom it has interviewed, have alleged concerning an instance in which Kay is alleged to have caused interference willfully or maliciously. However, the Bureau failed to disclose its relevant knowledge that certain interviewees have made certain allegations of fact.

Discovery of the information requested by Kay would not necessarily reveal the identity of the informants. To the extent that the Bureau can disclose facts concerning each instance in which Kay is alleged to have caused interference willfully or maliciously to a radio system or radio station without identifying the informant, it should be required to do so. For example, the information that Kay was alleged to have caused interference on or about a certain date to a station operating under a certain call sign by a certain means would not necessarily lead in any way to identification of the informant. Further, to the extent that certain persons were named by the Bureau in its answer to Interrogatory 4-1, the Bureau should be held to have waived the protection of Rule Section 1.311(b) and full disclosure of all allegations made by those persons should be compelled.

The Bureau listed the names of certain persons whom it said "are believed to have knowledge of instances of deliberate and/or malicious interference," but that answer is not sufficiently specific to be complete and responsive to Kay's interrogatory. Kay requested all

sufficiently specific to be complete and responsive to Kay's interrogatory. Kay requested all relevant facts concerning each instance in which Kay is alleged to have caused interference. Because the Bureau's statement concerning persons who are believed to have knowledge did not include a statement that their knowledge included an allegation that Kay had caused interference, the Bureau should be required to specify which of those persons which it named has knowledge of an allegation that Kay caused interference.

An answer equivalent in the extent of its scope and detail to the answer requested by the interrogatory was supplied by the Bureau in response to Kay's Interrogatory 2-7.

For all the foregoing reasons, Kay respectfully requests that the Bureau be required to respond fully and completely to Interrogatories 4-1, 4-2, 4-3, 4-4, 4-6, and 4-7.

Interrogatories 5-1 through 5-8: The Bureau's answers to Interrogatories 5-1 through 5-8 are not complete and not responsive to the interrogatories. It is obvious from the Bureau's answers to various interrogatories and by facts known to Kay that the Commission is in possession of relevant facts concerning instances in which Kay and/or his sales staff is alleged to have caused misused or abused the Commission's processes, but which it failed to disclose and which it could have disclosed without disclosing the identity of any otherwise-unidentified informant. Further, the Bureau's answer failed to disclose whether certain persons had alleged that Kay and/or his sales staff is alleged to have misused or abused the Commission's processes.

had conducted interviews with Christopher Killian, Harold Pick and James Doering. At Interrogatory 4-1, the Bureau stated that Edward Cooper and Cornelia Dray are believed to have direct knowledge of instances of relevant facts relating deliberate and/or malicious interference. Both Edward Cooper and Cornelia Dray have stated under oath that they were interviewed by W. Riley Hollingsworth during late 1994. The Commission has knowledge of the facts that each of those persons, and every other person whom it has interviewed, have alleged concerning an instance in which Kay is alleged to have caused interference willfully or maliciously. However, the Bureau failed to disclose its relevant knowledge of the facts alleged by persons interviewed by the Commission.

Discovery of the information requested by Kay would not necessarily reveal the identity of the informants. To the extent that the Bureau can disclose facts concerning each instance in which Kay is alleged to have caused interference willfully or maliciously to a radio system or radio station without identifying the informant, it should be required to do so. For example, the information that Kay was alleged to have caused interference on or about a certain date to a station operating under a certain call sign by a certain means would not necessarily lead in any way to identification of the informant. Further, to the extent that the persons named by the Bureau in its answers to Interrogatory 4-1 and 5-1, the Bureau should be held to have waived the protection of Rule Section 1.311(b) and full disclosure of all allegations made by those persons should be compelled.

The Bureau listed the names of certain persons whom it said "are believed to have knowledge of relevant facts relating to instances of abuse of process," but that answer is not sufficiently specific to be responsive to Kay's interrogatory. Kay requested all relevant facts concerning each instance in which Kay and/or his sales staff are alleged to have misused or abused the Commission's processes. Because the Bureau's statement concerning persons who are believed to have knowledge did not include a statement that their knowledge included an allegation that Kay and/or his sales staff had misused or abused the Commission's processes, the Bureau should be required to specify which of those persons which it named has knowledge of an allegation that Kay and/or his sales staff misused or abused the Commission's processes.

An example of an answer which Kay would find to be complete in its scope and detail would be the following: On or about June 3, 1993, Jane Dough, an alleged member of Kay's sales staff, is alleged to have misused or abused the Commission's processes by the following acts: [followed by a statement of the acts carried out by Dough]. On or about July 7, 1993, Sam Smith, an alleged member of Kay's sales staff, is alleged to have fraudulently induced an employee of United Corp. to sign a blank Commission form. On or about August 8, 1993, Tim Thomas, an alleged member of Kay's sales staff, is alleged to have induced Bill Board to sign a form, the intent of which was misrepresented by Dave Davis, another alleged member of Kay's sales staff. On or about August 13, 1993, Kay is alleged to have misappropriated a customer's license by the following acts: [followed by a statement of the acts carried out by Kay]. The following persons were allegedly fraudulently induced by Kay and/or his sales staff to sign a blank Commission form: [followed by a list of those persons]. The following persons

and entities were allegedly induced by Kay and/or his sales staff to sign a form, the intent of which was misrepresented by the persons identified: [followed by a list of those persons and entities induced, associated with the person(s) who made the misrepresentation]. Licenses for the following stations were allegedly misappropriated from the following former licensees by Kay on the following dates and the former licensees realized the alleged misappropriation on the following dates: [followed by a list of call signs and associated former licensees, together with the dates of the alleged misappropriation and the dates on which each former licensee realized the misappropriation].

For all the foregoing reasons, Kay respectfully requests that the Bureau be required to respond fully and completely to Interrogatories 5-1 through 5-8.

Interrogatory 6-1: The Bureau's answer was incomplete and not fully responsive to the interrogatory. The interrogatory requested that the Bureau "state all relevant facts which led the Commission to request information from Kay." The Bureau stated that it had "received a number of complaints (including those attached hereto bearing dates prior to January 21, 1994)". However, the Bureau did not state that the complaints which it attached to its answers to Kay's interrogatories were all of the complaints which it had received. It would appear clearly from other answers by the Bureau that it possesses other complaints, the facts of which it failed to disclose in response to Interrogatory 6-1. The Bureau also did not state that the complaints which it attached to its answers included all of the relevant facts which led the Commission to request information from Kay. Accordingly, the Bureau should be ordered to respond fully and

completely to the interrogatory. Kay would find to be complete an answer by the Bureau which had the following scope and detail: Copies of all complaints received by the Commission which led the Commission to request information from Kay in the January 31, 1994, letter are attached as Attachments A-Z. Additionally, the following relevant facts led the Commission request information from Kay in the January 31, 1994, letter: [followed by a statement of the relevant facts not contained with attached complaints or contained in complaints of which the Bureau does not choose to supply copies].

Interrogatory 6-2: The interrogatory requested that the Bureau "state all relevant facts which led the Commission to believe that Kay had committed rule violations by not meeting the construction and placed in operation requirements of the Commission's Rules". The Bureau's answer of "see response to previous interrogatories" was incomplete and not fully responsive to the interrogatory. In its response to the immediately previous interrogatory, namely, Interrogatory 6-1, the Bureau stated that it had "received a number of complaints (including those attached hereto bearing dates prior to January 21, 1994)". However, the Bureau did not state that the complaints which it attached to its answers to Kay's interrogatories were all of the complaints which it had received. It would appear clearly from other answers by the Bureau that it possesses other complaints, the facts of which it failed to disclose in response to Kay's interrogatories. The Bureau also did not state that the complaints which it attached to its answers included all of the relevant facts which led the Commission to request information from Kay. Further, because some of the Bureau's answers to previous interrogatories are clearly irrelevant to Interrogatory 6-2, *e.g.*, the Bureau's answers to Interrogatories 2-7 and 2-8, it is

impossible for Kay to ascertain the meaning of the Bureau's answer to Interrogatory 6-2. Accordingly, the Bureau should be ordered to respond completely and specifically to the interrogatory.

Kay would find to be complete in scope and detail an answer which stated that: The relevant facts which led the Commission to believe that Kay had committed rule violations by not meeting the construction and placed in operation requirements of the Commission's rules are the following: [followed by a list of the relevant facts].

Interrogatory 6-3: The interrogatory requested that the Bureau "state all relevant facts which led the Commission to request information to enable the staff to determine if stations licensed to Kay have permanently discontinued operation in violation of the Commission's rules. The Bureau's answer of "see response to previous interrogatories" was incomplete and not fully responsive to the interrogatory. In its response to previous interrogatory Interrogatory 6-1, the Bureau stated that it had "received a number of complaints (including those attached hereto bearing dates prior to January 21, 1994)". However, the Bureau did not state that the complaints which it attached to its answers to Kay's interrogatories were all of the complaints which it had received or that those complaints were relevant to the subject of Interrogatory 6-3. It would appear clearly from other answers by the Bureau that it possesses other complaints, the facts of which it failed to disclose in response to Kay's interrogatories. The Bureau also did not state that the complaints which it attached to its answers included all of the relevant facts which led the Commission to request information from Kay. Further, because some of the Bureau's

answers to previous interrogatories are clearly irrelevant to Interrogatory 6-3, *e.g.*, the Bureau's answers to Interrogatories 2-7 and 2-8, it is impossible for Kay to ascertain the meaning of the Bureau's answer to Interrogatory 6-3. Accordingly, the Bureau should be ordered to respond completely and specifically to the interrogatory.

Kay would find to be complete in scope and detail an answer which stated that: The relevant facts which led the Commission to request information to enable the staff to determine if stations licensed to Kay have permanently discontinued operation in violation of the Commission's rules are the following: [followed by a list of the relevant facts].

Interrogatory 6-4: The interrogatory requested that the Bureau "state all relevant facts which led the Commission to request information to enable the staff to determine Kay's compliance with the channel loading requirements of the Commission's rules". The Bureau's answer of "see response to previous interrogatories" was incomplete and not fully responsive to the interrogatory. In its response to Interrogatory 6-1, the Bureau stated that it had "received a number of complaints (including those attached hereto bearing dates prior to January 21, 1994)". However, the Bureau did not state that the complaints which it attached to its answers to Kay's interrogatories were all of the complaints which it had received or that those complaints were relevant to the subject of Interrogatory 6-4. It would appear clearly from other answers by the Bureau that it possesses other complaints, the facts of which it failed to disclose in response to Kay's interrogatories. The Bureau also did not state that the complaints which it attached to its answers included all of the relevant facts which led the Commission to request